

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
MIDWEST GRAIN PROCESSORS COOPERATIVE and MIDWEST GRAIN PROCESSORS, LLC	NO. 2006 -AQ- 01 2007

TO: Midwest Grain Processors Cooperative
Midwest Grain Processors, LLC
Patrick Samuelson, Registered Agent
1660 428th Street
Lakota, Iowa 50451

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Midwest Grain Processors Cooperative and Midwest Grain Processors, LLC (MGP) for the purpose of resolving air quality violations which have occurred at MGP's Lakota facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Relating to technical requirements:

Tom Wuehr, Air Quality Bureau
Iowa Department of Natural Resources
7900 Hickman Rd, Suite 1
Des Moines IA 50322
Phone: 515/281-7212

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part and Iowa Code section 455B.109 and 567

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Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. MGP is an ethanol fuel producer located in Lakota, Iowa. MGP processes corn into ethanol fuel and livestock feed. Emission producing units at the Lakota facility include grain receiving/storage, dryers, boilers, distillation towers, hammermills, silos, fermentation tanks, a cooling tower, and truck load-out.
2. A November 16, 2005 Notice of Violation (NOV) letter was sent to MGP by DNR after a September 9, 2005, test of DDG Dryer A, DDG Dryer B, and Heat Recovery Boiler (EPS10) showed emission limit violations of Permit No. 01-A-521-S4 for PM and NO_x.
3. A fourth quarter 2005, report for EPS10 showed the NO_x monitor was down 7.1% of operating time. Permit 01-A-521-S4 and 40 CFR 60.48(b) require MGP to continually monitor NO_x on EPS10.
4. An April 3, 2006, NOV was issued by DNR to MGP for violations discovered during a March 23, 2006, inspection. The violations included failure to maintain maintenance records as required by permit (Permit Nos. 04-A-991, 02-A-830-S1, 02-A-831-S1, 04-A-999, 03-A-1372-S2, 04-A-1001, 04A-340-S1, 04-A-1002, 02-A-825, 02-A-826-S1, 04-A-992, 04-A-993, 04-A-994, 04-A-995, 02-A-827, 02-A-523-S2, 02-A-828, 02-A-829, 04-A-996, 04-A-997-S1, 04-A-998-S1, 01-A-521-S5, 04-A-989, 01-A-526-S1-S5, 01-A-526-S2, 02-A-832-S2, 04-A-1003, and 04-A-1004), stack configurations for Grain Handling (EP SFX146) Permit No. 04-A-995, Hammermill (EP SFX151) Permit No. 04-A-997 and Hammermill (EP SFX152) Permit No. 04-A-998 different from permit requirements; and failure to conduct weekly haul road sweeping and three month silt-load testing as required by Permit No. 05-A-805. Permit No. 05-A-805 was issued on November 23, 2005, and neither weekly road sweeping nor three month silt-load testing had occurred by March 23, 2006. A silt-load test conducted on May 6, 2006 showed a violation of the silt-load limit contained in Permit No. 05-A-805.
5. An April 21, 2006 NOV was issued by DNR to MGP after a February 16, 2006 stack test on EPS10 showed an emission limit violation for NO_x. This occurred subsequent to a November 16, 2005 permit modification raising MGP's NO_x limit for EPS10 in Permit No. 01-A-521-S5.
6. A May 31, 2006 NOV was issued by DNR to MGP after DNR received MGP's first quarter 2006 emissions report for EPS10 on May 25, 2006 as required by Permit No. 01-A-521-S5. The report was due on April 30, 2006.
7. An August 9, 2006 NOV was issued by DNR to MGP after a June 26-29 stack test on EPS10 showed an emission limit violation for NO_x and the second quarter 2006 NO_x emissions report for EPS10 showed the NO_x monitor was down for 22.6% of operating time.

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8. An August 21, 2006 NOV was issued by DNR to MGP for exceeding the haul road silt-loading limit contained in Permit No. 05-A-805 during the May 6, 2006 silt-load test.
9. On September 20, 2006, MGP began operation of a new NO_x CEM installed to monitor emissions from EPS10.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.
2. Pursuant to Iowa Code §§ 455B.133 and 455B.134, 567 IAC 22.3(3) provides that a construction permit may be issued subject to conditions that may be specified in the permit. Such conditions may include, but are not limited to, emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. MGP has failed to maintain records, to follow operating conditions, operate Continuous Emission Monitoring, conduct required testing, properly construct the stacks in accordance with its permits, comply with reporting requirements, and has exceeded PM limits and NO_x limits on numerous occasions, and has. The above-stated facts show noncompliance with these provisions.

V. ORDER

THEREFORE, it is hereby ordered and MGP agrees to do the following:

1. Comply with all permit recordkeeping, reporting, and operating conditions;
2. Install an air flow monitoring system in the stack of EPS10 to assist in determining compliance with the NO_x limits of Permit No. 01-A-521-S5 within 105 days of the date the Director signs this administrative consent order;
3. Pay a penalty of \$10,000.00 within 60 days of the date the Director signs this administrative consent order.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$10,000.00 is assessed effective 30 days from the date this order is signed by the Director. The penalty shall be paid within 60 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

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Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit -- MGP has achieved an economic benefit by failing to comply with number of permit requirements including failing to maintain records, sweep haul roads, conduct silt-loading tests, and not operating the NO_x monitor for extended periods of time. MGP was able to realize a significant cost benefit in time and labor by not complying with permit requirements. Based on the above considerations, \$3000.00 is assessed for this factor.

Gravity of the Violation -- MGP has exceeded permit emission limits on four separate occasions in the course of the last year. MGP has failed to conform to a number of operating conditions contained in permits including sweeping, recordkeeping, testing, and failure to construct stacks in accordance with issued permits. Compliance with permit conditions for all permitted sources is necessary to monitor and protect ambient air quality. Failure to comply with permit conditions means that DNR is unable to accurately determine if MGP actions have caused environmental damage. Incomplete record keeping inhibits DNR's ability to accurately assess compliance with statutory and permit requirements. Violations such as these threaten the integrity of the regulatory program. Based on the above considerations, \$2,500.00 is assessed for emission limit violations, and \$1000.00 for other permit violations for a total of \$3,500.00 assessed for this factor.

Culpability -- MGP has a responsibility to remain knowledgeable of DNR's requirements and to be alert that its conduct is subject to the rules of DNR. MGP has been issued numerous permits in the past and is aware that permits include operating conditions, recordkeeping and reporting requirements. MGP has failed to comply with a number of these requirements for an extended period of time. In response to an NOV informing MGP of an emission limit violation, MGP has in fact requested a modification permit with an increased limit, which MGP then exceeded. The lack of proper record keeping also means that MGP will not be aware should it exceed permit limits. Based on the above considerations, \$2,500.00 is assessed for the NO_x emission violations, and \$1000 is assessed for the remaining violations for a total of \$3,500.00 assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of MGP. For that reason, MGP waives its rights to appeal this order or any part thereof.

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VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



JEFFREY R. VONK, DIRECTOR
Iowa Department of Natural Resources

Dated this 10 day of
January, 2006. 7



For Midwest Grain Processors Cooperative

Dated this 20 day of
December, 2006.



For Midwest Grain Processors, LLC

Dated this 20 day of
December, 2006.

55-09-003; Anne Preziosi; Tom Wuehr; EPA; VII.A.2